

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Susquehanna Radio Corp. and)
Whitley Media, LLC)
Application for Consent to Assignment of License) File No. BALH-20130701ADA
and)
Cancellation of License) File. No. BLH-20050309AAI
For DKTDK(FM)1, Sanger, Texas) Facility ID No. 26146

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 2014

Released: October 20, 2014

By the Commission:

1. The Commission has before it a March 26, 2014 Application for Review filed jointly by Whitley Media, LLC ("Whitley") and North Texas Radio Group, LP ("North Texas") (collectively "Petitioners"). Petitioners seek review of a Decision by the Media Bureau ("Bureau") which dismissed their petitions for reconsideration of the dismissal of an application to assign the license of KTDK(FM), Sanger, Texas (the "Station") from Susquehanna Radio Corp. ("Susquehanna") to Whitley (the "Application").2 They also seek reinstatement of the Station's license, which the Bureau cancelled at the request of Susquehanna. The Bureau's actions were based upon the following findings of fact and law: (1) in late September or early October 2013, Whitley, a radio broker, entered into a letter of intent to, in turn, assign the Station license to North Texas; (2) effective October 7, 2013, Susquehanna voluntarily surrendered the license for cancellation prior to acquiring an interest in another Dallas market station to comply with local ownership limits;3 (3) effective that same date, Susquehanna and Whitley terminated their agreement to assign the license to Whitley; (4) Petitioners lacked standing to challenge Susquehanna's voluntary cancellation of the Station license; (5) even had Petitioners shown standing, the Bureau could not require Susquehanna to reacquire a reinstated license in violation of the ownership rules; and (6) challenge of the Application's dismissal was moot because there was no longer a valid license to assign.4

2. Petitioners now argue that the Bureau's refusal to reinstate the cancelled license

1 The current call sign begins with a "D" to reflect its deletion. For ease of the reader, however, we will hereafter refer to it as "the Station" or KTDK, the call sign prior to deletion.

2 See Lewis Paper, Esq., Letter, 29 FCC Rcd 1905 (MB 2014) ("Decision").

3 See 47 C.F.R. § 73.3555(a)(1)(i).

4 See Decision, 29 FCC Rcd at 1905-09.

erroneously ignored Petitioners' contractual rights and that, by a Declaration dated November 25, 2013, Susquehanna indicated that it would not object to the reinstatement.⁵ Petitioners also repeat arguments that the proposed assignment would be consistent with the public interest and the purpose of the multiple ownership rules.⁶ They further raise a new argument that reinstatement/waiver/assignment is warranted because a government shutdown approximately one week prior to Susquehanna's planned acquisition of an interest in another Dallas radio station contributed to Susquehanna's need to surrender the license prior to potential action on the amended Application.⁷

3. Upon consideration of the Application for Review and the entire record, we affirm the dismissal of Petitioners' petitions for reconsideration for lack of standing. To establish standing, one must demonstrate a direct injury and a causal link between the injury and the challenged action.⁸ The causal link must be demonstrated by establishing: (1) that the injury can be traced to the challenged action; and (2) that the injury would be prevented or redressed by the relief requested.⁹ Here, by filing dated October 17, 2013, Susquehanna notified the Commission that, effective October 7, 2013, it and Whitley had terminated their agreement for Susquehanna to sell the Station to Whitley.¹⁰ Accordingly, on the respective October 21, 2013 and November 22, 2013 dates, when Whitley and North Texas filed their petitions for reconsideration of the Bureau's dismissal of the Application for approval for Susquehanna to assign the Station license to Whitley and of the Bureau's cancellation of that license, Whitley had no contractual right to acquire the license and, accordingly, neither it nor North Texas, its proposed buyer of the Station, had standing to seek reconsideration because neither had a legally cognizable injury as a result of the Application's dismissal and license's cancellation. Accordingly, the Bureau's dismissal of the petitions was appropriate.¹¹ To the extent that the Application for Review also relies upon matters not raised before the Bureau, it is also dismissed.¹²

⁵ Application for Review at 4-6. See 47 U.S.C. § 405(a).

⁶ Application for Review at 7-9. We also received supplemental filings with information not previously submitted. On August 22, 2014, Whitley filed a request for leave to file a Supplement consisting of letters and e-mails of support it gathered from leaders in Sanger, Texas and other communities in Denton County, as well as a petition signed by area residents. Representative is a letter from the Mayor of Northlake, Texas, who had earlier sent his letter directly to the Commission. The Mayor states that the assignment would serve the public interest because KTDK's focus was more local for listeners and more affordable for advertisers than other stations nominally licensed to communities within the county but directed at the metropolitan area as a whole. Letter from Peter Dewing, Mayor, Town of Northlake (July 28, 2014).

⁷ Application for Review at 9.

⁸ See *Hanford FM Radio*, Memorandum Opinion and Order, 11 FCC Rcd 8509, 8511 (1996).

⁹ *Warren Ache*, Memorandum Opinion and Order, 9 FCC Rcd 2464, 2467 (1993), citing *Lawrence Brandt*, Memorandum Opinion and Order, 3 FCC Rcd 4082 (CCB 1988); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978).

¹⁰ See Notice of Withdrawal of Petition for Reconsideration (Oct. 17, 2013) ("Susquehanna Radio Corp. hereby withdraws its Petition for Reconsideration of the decision of the Media Bureau dismissing the above-referenced application for the assignment of licensees for KTDK(FM) (citation omitted). The parties terminated the Amended Asset Purchase Agreement underlying that application as of October 7, 2013."). See also Letter to Marlene H. Dortch, Secretary, FCC (Sept. 30, 2013) (giving notice that station would permanently discontinue operation as of 11:59 p.m., Sunday, October 6, 2013 and would forward the license to the Commission on Monday, October 7, 2013).

¹¹ See *New Jersey Public Broadcasting Authority*, Memorandum Opinion and Order, 29 FCC Rcd 5558 (2014). In the *Decision*, the Bureau dismissed Whitley and North Texas' November 25, 2013 Supplement to their Petition for Reconsideration of the cancellation of the Station license. We agree with the Bureau's dismissal of the filing. That filing was not decisionally significant, in that it did not alter the fact that, at the time that Whitley and North Texas

(continued....)

4. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and sections 1.115(c) and (g) of the Commission's rules, 47 C.F.R. §§ 1.115(c),(g), the Application for Review IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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sought reconsideration, they had no contractual rights *vis-à-vis* the Station license. Moreover, the submission failed to comply with the requirement in Section 1.106(f) of the Rules that such an untimely filing be accompanied by a separate pleading requesting leave to so file and stating the grounds for acceptance. 47 C.F.R. § 1.106(f).

¹² See 47 C.F.R. § 1.115(c), n.6 *supra* and text associated with n.7. Because of our determination that Whitley and North Texas lacked the requisite standing to seek reconsideration, we need not review the other issues raised in the Application for Review.